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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

No. 995.

I-40 STEERING COMMITTEE, ETC., ET AL.,
Petitioners,

v.

BUFORD ELLINGTON, ETC., ET AL.,
Respondents.

REPLY

Of Respondent, Beverly Briley, to Petition for Writ of Certiorari.

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STATEMENT OF THE CASE.

Before and since the enactment of the Federal Aid Highway Program in 1956, The Metropolitan Government of Nashville and Davidson County[1] has been actively engaged in the study and preparation of programs designed to cope with the ever increasing and important problem of urban transportation. One of the first of such studies was undertaken in 1954 when the joint City and County Planning Commission employed the firm of Clark &

[1] The former City of Nashville and the former County of Davidson were consolidated into a metropolitan form of government which became effective April 1, 1963.

Rapuano.[2] As a result of their studies Clark and Rapuano proposed two alternate expressway routes providing rapid transit on the westerly side of the City of Nashville (Tr. 207 through 208, Plaintiff's Exh. 31). Following the passage of the Federal Aid Highway Act in 1956, the City abandoned its expressway plans, deeming the new Interstate Program sufficient for this purpose. The combined Planning Commission, now the Metropolitan Planning Commission, continued, however, to conduct studies relating to traffic congestion and the over-all needs of the community.

In early 1965 and throughout 1966, when it became apparent that the President's Model Cities Program would become a reality, the Metropolitan Planning Commission intensified its efforts in anticipation of being selected as a participant in the program. The result of these efforts was the filing of an application with the United States Department of Housing and Urban Development to participate in the Model Cities Program, designating North Nashville as the target site[3].

Even though the present location of the disputed section of I-40 has remained substantially unchanged since 1957, the first notice of dissatisfaction in its location was brought to the attention of Mayor Beverly Briley on or

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[2] Clark and Rapuano were subsequently employed in 1956 by the Department of Highways of the State of Tennessee to propose a route for Interstate 40 through Davidson County (Tr. pages 55, 56 and 58).

[3] A copy of the transmittal letters and the introduction to the program submitted by the Metropolitan Government to the Department of Housing and Urban Development is contained in Appendix I attached hereto. The entire application comprises 180 pages and is too voluminous to be reprinted here in its entirety. Appendix II contains a reproduction of a telegram from the Department of Housing and Urban Development designating Metropolitan Government, and more particularly the North Nashville community, as a participant in the Model Cities Program.

about September 26, 1967, when he received a telegram from the Campus Development Committee of Fisk University (Tr. page 151). Following the receipt of this notice, Mayor Beverly Briley directed Mr. Karl Stallings, Director of Public Works of The Metropolitan Government of Nashville and Davidson County, to give whatever support he could to the attempts of the Campus Development Committee to obtain a delay in the letting of the construction contracts on the disputed section of I-40 (Tr. Page 163, Plaintiff's Exh. 29). In addition, the Mayor initiated a meeting with the Committee in order to more fully understand their desires and assure them of his support in obtaining administrative relief (Tr. 165). Following this meeting, the next notice received by the Mayor was a summons to appear in the Federal District Court for the Middle District of Tennessee as a defendant against what had now become the I-40 Steering Committee.

Upon the trial in the District Court, the Mayor filed a motion to be dropped as a party-defendant. The District Judge found that since the Mayor was without power of authority to change the location of the disputed Interstate Highway, the motion should be granted and the Mayor dropped as a party-defendant.

On appeal to the United States Court of Appeals for the Sixth Circuit, this action of the District Judge was reviewed and reversed without a finding by the Court of Appeals that the District Judge abused his discretion in dropping Beverly Briley. The Court of Appeals said simply:

> "We consider it proper to retain a representative of the Metropolitan Government as a party-defendant." (Appendix to Plaintiff's Brief, page 16a.)

During the advanced stages of the prosecution of this suit, both the State and the local government have re-

peatedly stated that they stand ready and willing to provide additional over and under passes, frontage roads, and other engineering changes which would lessen the impact of the present location of Interstate 40 on the people affected. Since no substantial protest had been made prior to September, 1967, these commitments, of course, could not have been presented at the preliminary hearing. They are, however, a matter of public record.

ARGUMENT.

The respondent fully appreciates and realizes the tremendous impact the location of Interstate 40 will have on the residents of the North Nashville community. At the same time, however, the respondent also realizes that the over-all needs of the community demand the completion of I-40 through Davidson County. The respondent, therefore, will neither support nor oppose the granting of the writ of certiorari, but wishes simply to present the position of the Metropolitan Government on the case now before this Court. The respondent further realizes that the procedure which is hereby adopted is somewhat unorthodox. Respondent feels, nevertheless, that what is to be said hereafter will materially aid the Court in its disposition of this case.

Of primary importance is the need to have this case disposed of as expeditiously as possible. This case not only involves the last important segment of I-40 to be completed in Tennessee, it also involves the location of other important public improvements and the implementation and carrying forward of the Model Cities Program.

Whether a public improvement involves urban renewal or a National Defense Highway, the location of such projects creates nightmarish problems of economic disruption and relocation under the best of conditions. The North Nashville community is certainly not one with the best of conditions. Its many problems, only one of which is the location of the I-40 Highway, is perhaps best presented in the Metropolitan Government's application to the Department of Housing and Urban Development for a Model Cities Grant.

> "C. Summary of the problems of the designated area
> "Problems of the area include poverty, lack of education and job skills, poor housing, inadequate public

transportation, high crime rate and juvenile delinquency, insufficient communication and contact with the rest of the community, absence of motivation and a lack of health care and social services.

"Living environment is poor. There are is (sic) air pollution and unsightly industrial wastes. The crime rate is about twice that of the rest of the city. Family income is low (in 1959, almost half of the households had incomes less than $3,000). Unemployment is twice that of the rest of the city.

"There is a lack of decent housing and adequate financial arrangements for those who could afford better on present incomes.

"There is a lack of access roads and streets and a need for relocation programs for those who will be displaced soon by interstate routes which will cross the area."

Realizing the inherent problems of the area and the additional problems that will be caused by the location of a National Defense Highway, the executive and legislative branches of government began studies to develop plans designed to substantially reduce and hopefully eliminate the adverse conditions in North Nashville. The result of these studies was the program submitted to the Department of Housing and Urban Development on April 27, 1967. In addition to this major commitment, the local government has itself initiated programs designed to cope with particular problems created by the location of I-40 in North Nashville. One of these programs calls for the construction of the 8th and 19th Avenue North diverters, designed to direct through traffic away from Meharry Medical College and Fisk University.[4]

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[4] The Capital Improvements Budget of the Metropolitan Government of Nashville and Davidson County enacted June 14, 1967 by Ordinance No. 67-216 not only adopts this plan, but contains an authorization for funds for its implementation.

The problems of this area of our community were not caused simply by the location of an Interstate Highway, although this is certainly a major contributing factor. However, the plans now designed and implemented to deal with the North Nashville area take into consideration the present location of I-40. A Court decree which changes this location or leaves its ultimate location in doubt would not only further delay a needed public improvement, but would also require at least the temporary suspension, if not perhaps the eventual abandonment of programs now designed to eliminate or reduce the deleterious effects caused by the present location of the Interstate Highway.

Whether the decision of the Tennessee Department of Highways to locate I-40 where it is was prudent is arguable. Whether an alternate route could have been chosen which would have lessened the impact on North Nashville is likewise open to debate. Whether those persons affected can receive adequate compensation for the economic damage caused by the present location of I-40 is at this point a matter of State law. What remains clear is, the impact on the affected area and the commitments of the local, State, and Federal governments to take steps to eliminate or substantially reduce this impact and that further delay or an uncertain disposition as to the ultimate location of I-40 could result in chaos in, or elimination of present programs involving the North Nashville community.

The plaintiffs, or most of them, have been apprised of these programs and they have been assured of the cooperation of the local government to do all within its power to bring relief not only from the problems caused by the location of I-40, but all of the problems of the North Nashville community.

The position of the Metropolitan Government has been, and still remains, one of concern for the welfare of the

citizens in this affected area. Consistent with this position, the Metropolitan Government simply asks to be allowed to continue the work it has begun, without needless delay or confusion.

Respectfully submitted,

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